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In re Application of
Daniel LIEBERMAN
Application No. 09/809,121
Filed: March 15, 2001
Attorney Docket No. 32574-2/P02

CANCELLED
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DEC 02 2005
OFFICE OF PETITIONS
DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed October 28, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed November 22, 2002 which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 23, 2003.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137 (b) in that (1) the reply in the form of a Request for Continued Examination (RCE) and amendment under 37 CFR 1.114; (2) the petition fee of \$750 for a small entity as set forth in 37 CFR 1.17(m); and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action of November 22, 2002 is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due

date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The above-identified application has been abandoned for an extended period of time. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date of the reply for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure, 62 Fed. Reg. At 53160 and 53178; 1203 Off. Gaz. Office at 88 and 103 (responses to comments 64 and 109 (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office)).

Telephone inquiries concerning this decision should be directed to Amelia Au at (571) 272-7414. All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application file is being referred to Technology Center Art Unit 3729 for appropriate action.

A handwritten signature in black ink, appearing to read "Frances Hicks", is written over the printed name.

Frances Hicks
Lead Petitions Examiner
Office of Petitions